

# Title 13: CORPORATIONS

## Chapter 85: COOPERATIVES

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**Maine Revised Statutes**  
**Title 13: CORPORATIONS**  
**Chapter 85: COOPERATIVES**

**Subchapter 1: CONSUMER COOPERATIVES**

**Article 1: GENERAL PROVISIONS**

**§1501. DEFINITIONS**

In this subchapter, unless the subject matter requires otherwise:

**1. Association.** "Association" means a group enterprise legally incorporated under this subchapter and shall be deemed to be a nonprofit corporation.

**2. Cooperative basis.** "Cooperative basis" as applied to any incorporated or unincorporated group referred to in subsequent sections of this subchapter means:

A. That each member has one vote and only one vote, except as may be altered in the articles or bylaws by provisions for voting by member organizations;

B. That the maximum rate at which any return is paid on share or membership capital is limited to not more than 6%; and

C. That the net savings after payment, if any, of said limited return on capital and after making provision for such separate funds as may be required or specifically permitted by statute, articles or bylaws shall be allocated or distributed to member patrons, or to all patrons, in proportion to their patronage; or retained by the enterprise for the actual or potential expansion of its services or the reductions of its charges to the patrons, or for other purposes not inconsistent with its nonprofit character.

**3. Member.** "Member" means not only a member in a nonshare association but also a member in a share association.

**4. Net savings.** "Net savings" means the total income of an association minus the costs of operation.

**5. Savings returns.** "Savings returns" means the amount returned to the patrons in proportion to their patronage or otherwise in accordance with this subchapter.

**§1502. EXISTING COOPERATIVE GROUPS**

Any group incorporated under the law of this State and operating on a cooperative basis must file articles of amendment as required by Title 13-C, and any unincorporated group operating on a cooperative basis in this State may elect by a vote of 2/3 of the members voting to secure the benefits of and be bound by this subchapter. The unincorporated group shall amend its bylaws to conform to the provisions of this subchapter and file articles of incorporation as required by section 1551. [2007, c. 231, §2 (AMD).]

**SECTION HISTORY**

2007, c. 231, §2 (AMD).

**§1503. FOREIGN CORPORATIONS DOING BUSINESS IN STATE**

A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state or District of Columbia wherein it is organized shall be entitled to do business in the State as a foreign cooperative corporation or association upon complying with law for foreign corporations doing business in this State.

## **§1504. LAWS NOT APPLICABLE**

No law of the State conflicting or inconsistent with any part of this subchapter shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed under this subchapter; nor shall any law of the State inappropriate to the purposes of such associations be so construed.

## **§1505. TAXATION**

Associations formed under this subchapter and foreign corporations and associations admitted to do business in the State and entitled to the benefits of this subchapter shall pay the annual license fee required of other business corporations and foreign corporations.

## **§1506. REGISTRATION AS DEALERS IN SECURITIES**

*(REPEALED)*

### SECTION HISTORY

2013, c. 424, Pt. B, §2 (RP).

## **§1507. LIMITATION ON RETURN ON CAPITAL**

The return upon capital shall not exceed 6% per year upon the paid-up capital and shall be noncumulative.

Total return upon capital distributed for any single period shall not exceed 50% of the net savings for that period.

## **Article 2: ORGANIZATION AND BYLAWS**

## **§1551. ARTICLES OF INCORPORATION; FIRST MEETING; FEES**

Articles of incorporation for the formation of an association under this subchapter must be drawn up and filed in the same manner and under the same provisions as for organizing business corporations under Title 13-C, except where such procedure would be inconsistent with this subchapter. The same provision applies under Title 13-C to associations organized under this subchapter in respect to the first meeting of the corporation, and as to fees payable to the Secretary of State. [ 2007, c. 231, §3 (AMD). ]

### SECTION HISTORY

2007, c. 231, §3 (AMD).

## **§1552. WHO MAY INCORPORATE**

Any 3 or more natural persons or 2 or more associations may incorporate in this State under this subchapter.

## **§1553. PURPOSES**

An association may be incorporated under this subchapter to engage in any one or more lawful mode or modes of acquiring, producing, building, operating, manufacturing, furnishing, exchanging or distributing any type or types of property, commodities, goods or services for the primary and mutual benefit of the patrons of the association, or their patrons, if any, as ultimate consumers.

## **§1554. POWERS**

An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted by this subchapter and also:

1. **Continuation.** To continue as a corporation for the time specified in its articles;
2. **Seal.** To have a corporate seal and to alter the same at pleasure;

**3. Sue and be sued.** To sue and be sued in its corporate name;

**4. Bylaws.** To make bylaws for the government and regulation of its affairs;

**5. Acquire and dispose of property.** To acquire, own, hold, sell, lease, pledge, mortgage or otherwise dispose of any property incident to its purposes and activities;

**6. Own other corporations.** To own and hold membership in and share capital of other associations and any other corporations and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;

**7. Borrow money; make contracts.** To borrow money, contract debts and make contracts, including agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis and other nonprofit groups;

**8. Operate within and without State.** To conduct its affairs within or without this State;

**9. Powers of ordinary business corporations.** To exercise in addition any power granted to ordinary business corporations, save those powers inconsistent with this subchapter; and

**10. Other powers.** To exercise all powers not inconsistent with this subchapter which may be necessary, convenient or expedient for the accomplishment of its purposes, and to that end, the powers enumerated in this section shall not be deemed exclusive.

### **§1555. BYLAWS**

Bylaws shall be adopted, amended or repealed by at least a majority vote of the members voting.

### **§1556. MEETINGS**

Regular meetings shall be held as prescribed in the bylaws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least 3/10 of the membership, in which case it shall be the duty of the secretary to call such meeting to take place within 30 days after such demand.

## **Article 3: VOTING**

### **§1601. ONE MEMBER, ONE VOTE**

Each member of an association shall have one and only one vote, except that where an association includes among its members any number of other associations or groups organized on a cooperative basis, the voting rights of such member associations or groups may be as prescribed in the articles or bylaws.

No voting agreement or other device to evade the one-member-one-vote rule shall be enforceable by a civil action.

### **§1602. NO PROXIES**

*(REPEALED)*

#### **SECTION HISTORY**

1997, c. 7, §1 (RP).

### **§1603. APPLICATION OF PROVISIONS TO VOTING BY DELEGATES**

If an association has provided for voting by delegates, any provision of this subchapter referring to votes cast by the members shall apply to votes cast by delegates; but this shall not permit delegates to vote by mail.

## §1604. VOTING BY PROXY

Unless specified otherwise in an association's articles of incorporation or bylaws, members are permitted to vote by proxy. [1997, c. 7, §2 (NEW).]

**1. Appointment of agent.** The appointment of one or more agents to vote on behalf of the member must be by written proxy executed by the member or by the member's duly authorized attorney-in-fact. A telegram, cablegram or facsimile appearing to have been transmitted may be considered to satisfy this requirement.

[ 1997, c. 7, §2 (NEW) .]

**2. Duration.** A proxy is valid for only 11 months from the date of its execution, unless otherwise expressly and conspicuously provided in the proxy.

[ 1997, c. 7, §2 (NEW) .]

**3. Revocation.** A proxy is revocable at the pleasure of the person executing it. A proxy may be revoked, without limitation, by an instrument that in terms revokes the proxy or by a subsequent duly executed proxy. The authority of a proxy holder is not revoked by death or supervening incapacity of the member executing the proxy unless, before the authority is exercised, written notice of death or incapacity is filed with the corporate officer responsible for maintaining the list of members. The presence at a members' meeting of the member appointing a proxy does not of itself revoke the proxy. A member may revoke an appointment of a proxy by giving notice to the corporate officer responsible for maintaining a list of members or by giving notice in open meeting of the members.

[ 1997, c. 7, §2 (NEW) .]

### SECTION HISTORY

1997, c. 7, §2 (NEW).

## Article 4: MEMBERS

### §1641. ELIGIBILITY AND ADMISSION TO MEMBERSHIP

Any natural person, association, incorporated or unincorporated group organized on a cooperative basis or any nonprofit group shall be eligible for membership in an association, if it has met the qualifications for eligibility, if any, stated in the articles or bylaws and shall be deemed a member upon payment in full for the par value of the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership.

### §1642. SUBSCRIBERS

Any natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or bylaws may determine whether, and the conditions under which, any voting rights or other rights of membership shall be granted to subscribers.

### §1643. LIABILITY OF MEMBERS

Members shall not be jointly or severally liable for any debts of the association, nor shall a subscriber be so liable except to the extent of the unpaid amount on the shares or membership certificates subscribed by him. No subscriber shall be released from such liability by reason of any assignment of his interest in the shares or membership certificate, but shall remain jointly and severally liable with the assignee until the shares or certificates are fully paid-up.



## §1644. EXPULSION

A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed thereof in writing at least 10 days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at said meeting. On decision of the association to expel a member, the board of directors shall purchase the member's holdings at par value, if and when there are sufficient reserve funds.

## §1645. ALLOCATION AND DISTRIBUTION OF NET SAVINGS

At least once a year the members or the directors, or both, as the articles or bylaws may provide, shall apportion the net savings of the association in the following order.

**1. Reserve fund.** Not less than 10% shall be placed in a reserve fund until such time as the fund shall equal at least 50% of the paid-up capital; and such fund may be used in the general conduct of the business. The amounts apportioned to the reserve fund shall be allocated on the books of the association on a patronage basis, or in lieu thereof, the books and records of the association shall afford a means for doing so in order that upon dissolution or earlier, if deemed advisable, such reserves may be returned to the patrons who have contributed the same, subject to the limitations of the section on dissolution herein;

**2. Return upon capital.** A return upon capital, within the limitations of sections 1507, 1641 to 1644, 1691 and 1692, may be paid upon share capital; but such return upon capital may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities, including in the latter the amount of the capital stock, after deducting from such aggregate of the assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets.

**3. Educational fund.** A portion of the remainder, as determined by the articles or bylaws, shall be allocated to an educational fund to be used in teaching cooperation, and a portion may be allocated to funds for the general welfare of the members of the association.

**4. Patronage.** The remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage:

- A. In the case of a member patron, his proportionate amount of savings returns shall be distributed to him unless he agrees that the association should credit the amount to his account toward the purchase of an additional share or shares or additional membership capital;
- B. In the case of a subscriber patron, his proportionate amount of savings returns may, as the articles or bylaws provide, be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid;
- C. In the case of a nonmember patron, his proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember patrons only upon request and presentation of evidence of the amount of their patronage. Any savings returns so allocated shall be credited to such patron toward payment of the minimum amount of share or membership capital necessary for membership, or may be paid to such patron. When a sum equal to this amount has been accumulated and so credited at any time within a period of time specified in the bylaws, such patron shall be deemed and become a member of the association if he so agrees or requests and complies with any provisions in the bylaws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him;
- D. If within any periods of time specified in the articles or bylaws:
  - (1) Any subscriber has not accumulated and paid in the amount of capital subscribed for; or
  - (2) Any nonmember patron has not accumulated in his individual account the sum necessary for membership; or

(3) Any nonmember patron has accumulated the sum necessary for membership, but neither requests nor agrees to become a member or fails to comply with the provisions of the bylaws, if any, for admission to membership;

then the amounts so accumulated or paid in shall go to the educational fund, and thereafter no member or other patron shall have any rights in said paid-in capital or accumulated savings returns as such. Nothing in this section shall prevent an association operating under this subchapter, which is engaged in rendering services, from disposing of the net savings from the rendering of such services in such manner as to lower the fees charged for services or otherwise to further the common benefit of the members. Nothing in this section shall prevent an association from adopting a system whereby the payment of savings returns, which would otherwise be distributed, shall be deferred for a fixed period of months or years; nor from adopting a system whereby the savings returns distributed shall be partly in cash, partly in shares, such shares to be retired at a fixed future date in the order of the serial number or date of issue.

## Article 5: SHARES

### §1691. ISSUANCE AND CONTENTS

No certificate for share or membership capital shall be issued until the par value thereof has been paid for in full. There shall be printed upon each certificate issued by an association a full or condensed statement of the requirements of sections pertaining to one-member-one-vote, no proxy and transfer of shares and membership.

### §1692. TRANSFER OF SHARES AND MEMBERSHIP; WITHDRAWAL

If a member desires to withdraw from the association or dispose of any or all of his holdings, the directors shall have the power to purchase such holdings by paying him the par value of any or all of the holdings offered. The directors shall then reissue or cancel the same. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

If the association fails, within 60 days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors shall exercise their power to purchase, if and when such purchase can be made without jeopardizing the solvency of the association.

## Article 6: DISSOLUTION

### §1731. PROCEDURE

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of 2/3 of the entire membership. By a vote of a majority of the members voting, 3 of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets and shall distribute them in the manner set forth in this section. In case of any dissolution of an association, its assets shall be distributed in the following manner and order:

**1. Paying debts and expenses.** By paying its debts and expenses;

**2. Amounts paid by members.** By returning to the members the par value of their shares or of their membership certificates, returning to the subscribers the amounts paid on their subscriptions and returning to the patrons the amount of savings returns credited to their accounts toward the purchase of shares or membership certificates; and

**3. Paying patrons or giving to nonprofit associations.** By distributing any surplus in either or both of the following ways as the articles may provide:

A. Among those patrons who have been members or subscribers at any time during the past 6 years, on the basis of their patronage during that period; or

B. As a gift to any consumers' cooperatives association or other nonprofit enterprise which may be designated in the articles.

## Subchapter 1-A: COOPERATIVE AFFORDABLE HOUSING OWNERSHIP

### §1741. SHORT TITLE

This subchapter may be known and cited as the "Maine Cooperative Affordable Housing Ownership Act." [1993, c. 300, §1 (NEW).]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### §1742. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 300, §1 (NEW).]

**1. Conversion.** "Conversion" means a change in character of residential real property from a rental to an ownership basis. Creation of a cooperative affordable housing corporation to own property formerly rented for dwelling purposes is considered such a change in character.

[ 1993, c. 300, §1 (NEW) .]

**2. Cooperative affordable housing corporation.** "Cooperative affordable housing corporation" means a domestic corporation that is organized under or elects to be governed by the provisions of this subchapter.

[ 1993, c. 300, §1 (NEW) .]

**3. Cooperative interest.** "Cooperative interest" means the ownership interest in a cooperative affordable housing corporation that is evidenced by a membership share.

[ 1993, c. 300, §1 (NEW) .]

**4. Cooperative property.** "Cooperative property" means the real and personal property, including mobile and manufactured homes, in this State owned or leased by a cooperative affordable housing corporation for the primary purpose of residential use.

[ 1993, c. 300, §1 (NEW) .]

**5. Lender.** "Lender" includes, but is not limited to, the following institutional lenders whose policies and procedures are subject to governmental supervision:

A. A federal, state or local housing finance agency; [1993, c. 300, §1 (NEW).]

B. A bank, including savings and loan associations or insured credit unions; [1993, c. 300, §1 (NEW) .]

C. Insurance companies; [1993, c. 300, §1 (NEW) .]

D. Pension and profit-sharing funds or trusts; or [1993, c. 300, §1 (NEW) .]

E. Any combination of the lenders listed in paragraphs A to D. [1993, c. 300, §1 (NEW) .]

"Lender" also includes a community loan fund or similar nonprofit lender to housing projects.

[ 1993, c. 300, §1 (NEW) .]

**6. Limited equity cooperative.** "Limited equity cooperative" means a cooperative affordable housing corporation organized in accordance with section 1754.

[ 1993, c. 300, §1 (NEW) .]

**7. Limited equity formula.** "Limited equity formula" means a rule or method for determining the transfer value of a share in a limited equity cooperative.

[ 1993, c. 300, §1 (NEW) .]

**8. Low income.** "Low income" means income that is less than or equal to 80% of median income for the area, adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under this subchapter and comparable to standards of the federal Department of Housing and Urban Development in existence on the effective date of this section.

[ 1993, c. 300, §1 (NEW) .]

**9. Member.** "Member" means a person who owns a cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

**10. Moderate income.** "Moderate income" means income that is less than or equal to 100% of median income for the area, adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under this subchapter and comparable to standards of the federal Department of Housing and Urban Development in existence on the effective date of this section.

[ 1993, c. 300, §1 (NEW) .]

**11. Proprietary lease.** "Proprietary lease" means an agreement with a cooperative affordable housing corporation governing a member's right to occupancy under which a member has an exclusive possessory interest in a unit.

[ 1993, c. 300, §1 (NEW) .]

**12. Resident.** "Resident" means any occupant of space owned by the cooperative affordable housing corporation.

[ 1993, c. 300, §1 (NEW) .]

**13. Share loan.** "Share loan" means an agreement entered into by a member and a lender to finance the member's acquisition of the member's cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

**14. Subscription agreement.** "Subscription agreement" means a written agreement between a prospective member and a cooperative affordable housing corporation for the purchase and sale of a cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

**15. Unit.** "Unit" means a portion of the cooperative property leased for exclusive occupancy by a member under a proprietary lease or leased to a tenant by lease agreement.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

## §1743. APPLICATION

**1. Nonprofit.** Cooperative affordable housing corporations are considered nonprofit inasmuch as they are not organized to make a profit for themselves or for their members.

[ 1993, c. 300, §1 (NEW) .]

**2. Applicability.** Except as otherwise provided in this subchapter, cooperative affordable housing corporations in the State are governed by and have all the rights, privileges and powers established in Title 13-C. Without limiting the applicability of federal law to any other corporation or unincorporated association that provides housing on a cooperative basis, it is the intent that cooperative affordable housing corporations governed by this subchapter qualify as cooperative housing corporations under federal law.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §27 (COR) .]

**3. Election.** Any corporation governed by Title 13-C may elect by a vote of 2/3 of the members voting to secure the benefits of and be bound by this subchapter and must then amend its articles of incorporation to conform with this subchapter.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §27 (COR) .]

**4. Exemption.** Any corporation or unincorporated association that does not elect to be governed under this subchapter may not be restricted from providing housing on a cooperative basis whether as a consumer cooperative under subchapter I or otherwise.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B27 (COR).

## §1744. NAME; USE OF "COOPERATIVE"

A person, firm, corporation or association, domestic or foreign, commencing business in this State after the effective date of this section may not use the word "cooperative" or "co-op" as a part of its corporate name unless it has complied with this subchapter or any other law of this State relating to cooperative associations. A foreign association organized under and complying with the cooperative laws of the state in which it was created is entitled to use the term "cooperative" or "co-op" in this State if it has obtained the privilege of doing business or carrying on activities in this State. [1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

## §1745. PROPERTY CLASSIFICATION OF COOPERATIVE INTEREST

**1. Personal property.** A cooperative interest is personal property.

[ 1993, c. 300, §1 (NEW) .]

**2. Nonseverable interest.** The possessory interest evidenced by a proprietary lease is a part of and may not be severed from a cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

### SECTION HISTORY

1993, c. 300, §1 (NEW).

## §1746. PERFECTION OF SECURITY INTERESTS IN COOPERATIVE INTERESTS

**1. Creation of security interest.** Security interests in shares of cooperative affordable housing corporations may be created, perfected and enforced in the same manner as security interests in certificated securities under Title 11, Articles 8-A and 9-A. A lender may perfect such a security interest by possession of shares or by any other method under which security interests in certificated securities may be perfected pursuant to Title 11, Article 8-A.

[ 1999, c. 699, Pt. D, §9 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

**2. Notation of secured party.** Upon the request of a secured party, a cooperative affordable housing corporation shall note on its books and records the interest of the secured party in a cooperative interest. Such a request or notation is not required to perfect a security interest in a cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

### SECTION HISTORY

1993, c. 300, §1 (NEW). 1999, c. 699, §D9 (AMD). 1999, c. 699, §D30 (AFF).

## §1747. ARTICLES OF INCORPORATION; MINIMUM REQUIREMENTS

Articles of incorporation of a cooperative affordable housing corporation must contain the following provisions in addition to those required by Title 13-C: [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §28 (COR).]

**1. One class of stock.** A statement that the cooperative affordable housing corporation has only one class of stock;

[ 1993, c. 300, §1 (NEW) .]

**2. Restrictions on transfers.** A statement of restrictions, if any, upon transfers of shares;

[ 1993, c. 300, §1 (NEW) .]

**3. Rate of dividend.** The rate of dividend, if any, allocable to membership shares, which may not exceed 6% per annum on invested capital;

[ 1993, c. 300, §1 (NEW) .]

**4. Acquire membership.** The conditions, if any, under which the cooperative affordable housing corporation reserves the right to acquire membership shares;

[ 1993, c. 300, §1 (NEW) .]

**5. Distribution upon dissolution.** The basis for distribution of assets in the event of dissolution;

[ 1993, c. 300, §1 (NEW) .]

**6. Allocation of ownership and voting interests.** The method of allocation of ownership and voting interests in the cooperative affordable housing corporation; and

[ 1993, c. 300, §1 (NEW) .]

**7. Right of first refusal.** The conditions, if any, under which the cooperative affordable housing corporation has a right of first refusal upon proposed transfers of cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B28 (COR).

### §1748. ORGANIZATIONAL MEETING

Within 6 months after the first conveyance of a share to a member, an organizational meeting of the cooperative affordable housing corporation must be held for the purpose of adopting bylaws, electing officers and transacting such other business as may come before the meeting. [1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW) .

### §1749. MEMBERSHIP

**1. Capital stock.** A cooperative affordable housing corporation must be organized on a membership basis with capital stock.

[ 1993, c. 300, §1 (NEW) .]

**2. Requirements.** A cooperative affordable housing corporation must have one class of stock and one class of members. The designation, qualifications, requirements, method of acceptance and incidents of membership must be set forth in the articles of incorporation or the bylaws.

[ 1993, c. 300, §1 (NEW) .]

**3. Transfers.** A member may not transfer membership except as permitted in the articles of incorporation or the bylaws.

[ 1993, c. 300, §1 (NEW) .]

**4. Termination.** The articles of incorporation or the bylaws may provide for termination of membership and the conditions and terms of termination.

[ 1993, c. 300, §1 (NEW) .]

SECTION HISTORY

1993, c. 300, §1 (NEW).

## **§1750. BYLAWS; MINIMUM REQUIREMENTS**

The bylaws of a cooperative affordable housing corporation must contain procedures under which the cooperative affordable housing corporation's possessory remedy will be pursued in the event of a member's default and the rights of a defaulting member, in accordance with section 1755, subsection 2. [1993, c. 300, §1 (NEW).]

SECTION HISTORY

1993, c. 300, §1 (NEW).

## **§1751. MEMBERSHIP SHARES; REQUIREMENTS**

A cooperative affordable housing corporation shall issue shares to its members as evidence of their ownership of a cooperative interest. The shares must be in a form prescribed in the articles of incorporation or bylaws of the cooperative affordable housing corporation. Restrictions upon transfers of shares must be noted on the face of the certificates representing shares. Membership shares may not be issued under this section and proprietary leases may not be issued under section 1755 before filing of the articles of incorporation as a cooperative affordable housing corporation. [1993, c. 300, §1 (NEW).]

SECTION HISTORY

1993, c. 300, §1 (NEW).

## **§1752. VOTING**

**1. One vote per member.** Except as provided in subsection 5, the votes in a cooperative affordable housing corporation must be assigned so that each member has one vote.

[ 1993, c. 300, §1 (NEW) .]

**2. Nonmembers on board.** Nonmembers may be elected by the membership of the cooperative affordable housing corporation to serve on the board of directors of the cooperative affordable housing corporation, except that no more than 1/3 of the directors may be nonmembers.

[ 1993, c. 300, §1 (NEW) .]

**3. Proxy voting.** Voting by proxy may be permitted in cooperative affordable housing corporations, subject to the following limitations:

A. Proxies must be assigned to members; and [1993, c. 300, §1 (NEW) .]

B. No more than one proxy may be voted by any member on any question. [1993, c. 300, §1 (NEW) .]

[ 1993, c. 300, §1 (NEW) .]



**4. Absentee ballots.** Voting by absentee ballots may be permitted in cooperative affordable housing corporations.

[ 1993, c. 300, §1 (NEW) . ]

**5. Alternative voting scheme.** Notwithstanding subsection 1, a cooperative affordable housing corporation not organized as a limited equity cooperative pursuant to section 1754 may adopt in its articles of incorporation or bylaws a voting scheme other than one vote per member, except that decisions to merge a cooperative affordable housing corporation with another entity, to dissolve it or to amend its articles of incorporation or bylaws must be made on the basis of one vote per member.

[ 1993, c. 300, §1 (NEW) . ]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### §1753. MERGER; CONSOLIDATION

A cooperative affordable housing corporation may not consolidate or merge with another corporation other than a cooperative affordable housing corporation. Two or more cooperative affordable housing corporations may consolidate or merge in accordance with Title 13-C, chapter 11. Cooperative affordable housing corporations may not engage in mergers or consolidation if such an action is undertaken for the purpose of circumventing section 1754, 1757, 1758 or 1761. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §29 (COR).]

#### SECTION HISTORY

1993, c. 300, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B29 (COR).

### §1754. LIMITED EQUITY COOPERATIVES

A cooperative affordable housing corporation may organize as a limited equity cooperative in order to fulfill the public purpose of providing and preserving housing for persons and households of low income and moderate income at the time that they purchase their memberships. In addition to safeguarding the public purpose, a limited equity cooperative must meet the following requirements. [1993, c. 300, §1 (NEW) . ]

**1. Sale of interest based on limited equity formula.** The articles of incorporation must require that cooperative interests be sold at no more than a transfer value determined by a limited equity formula contained in the articles. That value must be consistent with the object of maintaining long-term affordability of cooperative interests for persons or households of low income and moderate income.

[ 1993, c. 300, §1 (NEW) . ]

**2. Maintenance of affordability.** A limited equity formula, once established by a cooperative affordable housing corporation in its articles of incorporation, may be amended only if that amendment does not make the cooperative membership unaffordable for classes of low-income or moderate-income households for which the cooperative affordable housing corporation was originally incorporated. A cooperative affordable housing corporation once organized under this section may not reorganize as other than a limited equity cooperative without first dissolving.

[ 1993, c. 300, §1 (NEW) . ]

**3. Uphold public purpose.** A limited equity cooperative may not sell all or substantially all of its assets if such sale is intended to circumvent the public purpose of this section.

[ 1993, c. 300, §1 (NEW) .]

**4. Right to repurchase.** The articles of incorporation must require that the cooperative affordable housing corporation has the first right to repurchase a member's cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

**5. Limit on capital distribution.** The articles of incorporation must require that the total distribution of capital to a member not exceed the transfer value.

[ 1993, c. 300, §1 (NEW) .]

**6. Distribution upon dissolution.** The articles of incorporation must require that upon dissolution of the cooperative affordable housing corporation any assets remaining after retirement of corporate debts and distribution to members must be distributed to a charitable organization described in the Internal Revenue Code of 1986, Section 501(c)(3), as amended, a public agency or another limited equity cooperative whose formula for determining transfer value is no less restrictive than that of the cooperative affordable housing corporation being dissolved.

[ 1993, c. 300, §1 (NEW) .]

**7. Sublease limitations.** The articles of incorporation must require that a sublease of a unit may not require monthly payments by the sublessee in excess of 100% of the monthly payments for the unit required in the proprietary lease.

[ 1993, c. 300, §1 (NEW) .]

**8. Minimum occupancy requirement.** At least 80% of a limited equity cooperative's occupied units must be occupied by members.

[ 1993, c. 300, §1 (NEW) .]

**9. Residents only.** Voting authority may not be assigned to nonresidents, except for any assignment as security for a share loan or as security for a loan for construction, acquisition or permanent financing of cooperative property.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

## §1755. PROPRIETARY LEASE

Every member of a cooperative affordable housing corporation is entitled to receive from the cooperative affordable housing corporation a written proprietary lease that must include the following: [ 1993, c. 300, §1 (NEW) .]

**1. Personal property security interest.** A provision that the collateral for a loan against the member's cooperative interest is in the nature of a personal property security interest and any default of such a loan entitles the lender to treat the default in the same manner as a default of a loan secured by personal property;

[ 1993, c. 300, §1 (NEW) .]

**2. Remedy for default.** A description of the cooperative affordable housing corporation's possessory remedy in the event of default. Good cause is required for termination of the right of occupancy. "Good cause" includes nonpayment of loans, fees, costs or assessments pertaining to the cooperative interest or material violation of bylaws, rules or proprietary lease that continues following reasonable notice and reasonable opportunity to cure the alleged material violations; and

[ 1993, c. 300, §1 (NEW) .]

**3. Maintenance and carrying charges.** Provisions for determining maintenance and carrying charges for the unit.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

## **§1756. OFFERING OF COOPERATIVE INTERESTS; SUBSCRIPTION AGREEMENT; DISCLOSURES REQUIRED**

**1. Materials provided to prospective members.** In conjunction with the offering of cooperative interests to prospective members, a person or entity offering to sell cooperative interests shall provide to a purchaser prior to the execution of a subscription agreement by the purchaser a copy of the proposed or adopted articles of incorporation and bylaws of the cooperative affordable housing corporation, a subscription agreement or sales agreement, a proposed proprietary lease and the most current corporate financial statements, if any exist.

[ 1993, c. 300, §1 (NEW) .]

**2. Contents of agreements.** The subscription agreement or sales agreement must contain:

A. Provisions detailing the cost of acquisition of a cooperative interest, the rights and privileges of membership in the cooperative affordable housing corporation and terms and conditions of occupancy of a unit in the cooperative affordable housing corporation; [1993, c. 300, §1 (NEW).]

B. Provisions, if any, under which the subscription agreement or sales agreement is subordinated to other agreements or otherwise encumbered; [1993, c. 300, §1 (NEW).]

C. Provisions for cancellation of the agreement by either party; and [1993, c. 300, §1 (NEW) .]

D. A legally sufficient description of the property. [1993, c. 300, §1 (NEW).]

[ 1993, c. 300, §1 (NEW) .]

**3. Cancellation.** The subscriber or purchaser has the right to cancel the subscription agreement or sales agreement without penalty upon provision of written notice to the offeror within 10 days of the date of signing the agreement. In the event of a cancellation, all money paid by the subscriber or purchaser to the offeror must be returned to the subscriber or purchaser by the offeror within 14 days of receipt of the notice of cancellation. The offeror shall inform the subscriber or purchaser in writing of the right of cancellation.

[ 1993, c. 300, §1 (NEW) .]

Notwithstanding any other provision of law to the contrary, the offer of membership, shares or other ownership interests in a cooperative affordable housing corporation or any other corporation or unincorporated association organized for the primary purpose of providing housing on a cooperative basis as a consumer cooperative under subchapter 1 or otherwise is not the offer of a security pursuant to Title 32, chapter 135 or any other provision of law. [2005, c. 65, Pt. C, §7 (AMD).]

SECTION HISTORY

1993, c. 300, §1 (NEW). 2005, c. 65, §C7 (AMD).

## **§1757. CONSUMER PROTECTION; ENFORCEMENT**

Failure or neglect to provide to purchasers the documents and disclosures required by section 1756 is considered a violation of Title 10, chapter 206. [1993, c. 300, §1 (NEW).]

SECTION HISTORY

1993, c. 300, §1 (NEW).

## **§1758. DISSOLUTION**

By vote of at least 80% of its members or any larger percentage specified in the articles of incorporation or bylaws, a cooperative affordable housing corporation may vote to dissolve and terminate its proprietary leases. In addition, a cooperative affordable housing corporation must file articles of dissolution and pay the fee for dissolution as required for business corporations under Title 13-C. [2007, c. 231, §4 (AMD).]

SECTION HISTORY

1993, c. 300, §1 (NEW). 2007, c. 231, §4 (AMD).

## **§1759. LOANS**

Any lender is authorized to make loans secured by shares in a cooperative affordable housing corporation, including limited equity cooperatives. For purposes of Title 9-A, section 1-202, subsection (8), a loan secured by shares of a cooperative affordable housing corporation must be considered a loan secured by a mortgage on real estate. [1993, c. 300, §1 (NEW).]

SECTION HISTORY

1993, c. 300, §1 (NEW).

## **§1760. NET INCOME; APPORTIONMENT**

**1. Apportionment.** Subject to subsection 2, the board of directors of a cooperative affordable housing corporation may apportion annually the remainder of its net income in one or more of the following ways:

A. As a reserve fund for the general operation of the cooperative affordable housing corporation; or  
[1993, c. 300, §1 (NEW).]

B. As a dividend not to exceed 6% per annum on invested capital. [1993, c. 300, §1 (NEW).]

[ 1993, c. 300, §1 (NEW) .]

**2. Cost reduction.** This section does not prevent a cooperative affordable housing corporation from disposing of its net income by reducing the cost of facilities or services or by applying the net income otherwise for the common benefit of its members.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

## §1761. NONDISCRIMINATION

Title 5, chapter 337, subchapter IV applies to all cooperative affordable housing corporations in the State. [1993, c. 300, §1 (NEW).]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

## §1762. PROPERTY TAX PROVISIONS

**1. Property not tax-exempt.** Notwithstanding any provision of law to the contrary, cooperative property does not qualify for property tax exemption under Title 36, section 652, subsection 1, paragraph A.

[ 1993, c. 300, §1 (NEW) .]

**2. Eligibility for property tax relief.** Without limiting the eligibility of members of any other corporation or unincorporated association that provides housing on a cooperative basis for tax relief, a member of a cooperative affordable housing corporation is eligible for any relief afforded to property taxpayers under law.

[ 1993, c. 300, §1 (NEW) .]

**3. Homestead exemption from attachment and execution.** Title 14, section 4422 applies to cooperative interests in cooperative affordable housing corporations.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

## Subchapter 2: AGRICULTURAL MARKETING AND BARGAINING

### Article 1: GENERAL PROVISIONS

## §1771. SHORT TITLE

This subchapter may be cited as the "Uniform Agricultural Cooperative Association Act".

## §1772. POLICY

It is the declared policy of this State, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective associations under the control of such producers, and to that end this subchapter should be liberally construed.

## §1773. UNIFORMITY OF INTERPRETATION

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

## §1774. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §133 (AMD).]

**1. Agricultural products.** "Agricultural products" include floricultural, horticultural, viticultural, forestry, nut, dairy, livestock, poultry, bee and any farm products.

**2. Articles.** "Articles" means the articles of incorporation.

**3. Association.** "Association" means a corporation organized under this subchapter, or a similar domestic corporation, or a foreign association or corporation if authorized to do business in this State, organized under any general or special Act as a cooperative association for the mutual benefit of its members, as agricultural producers, and which confines its operations to purposes authorized by this subchapter and restricts the return on the stock or membership capital and the amount of its business with nonmembers to the limits placed thereon by this subchapter for associations organized hereunder.

[ 1993, c. 316, §10 (AMD) .]

**4. Board.** "Board" means the board of directors.

**5. Domestic association.** "Domestic association" means an association or corporation formed under the laws of this State.

**6. Foreign association.** "Foreign association" means an association or corporation not formed under the laws of this State.

**6-A. Independent agricultural contractor.** "Independent agricultural contractor" means a person who grows under contract as his primary activity or as part of a general agricultural activity.

[ 1971, c. 502, (NEW) .]

**6-B. Marketing contract.** "Marketing contract" includes a contract related to the marketing of agricultural products and a contract by an independent agricultural contractor for furnishing services and facilities in raising or growing agricultural products.

[ 1971, c. 502, (NEW) .]

**7. Member.** "Member" includes the holder of a membership in an association without capital stock and the holder of common stock in an association organized with capital stock.

**8. Person.** "Person" includes an individual, a partnership, a corporation and an association.

**8-A. Producers.** "Producers" includes independent agricultural contractors.

[ 1971, c. 502, (NEW) .]

**9. Subchapter.** "This subchapter" means the "Uniform Agricultural Cooperative Association Act."

### SECTION HISTORY

1971, c. 502, (AMD). 1979, c. 541, §A133 (AMD). 1993, c. 316, §10 (AMD).

## §1775. EXISTING ASSOCIATIONS

Any existing association formed under any law of this State as a cooperative agricultural association may elect, by a vote of 2/3 of the members voting thereon at a legal meeting, to secure the benefits of and be bound by this subchapter, and shall thereupon amend such of its articles and bylaws as are not in conformity with this subchapter. A certificate of the action taken at such meeting shall be filed with the Secretary of State within 20 days after such meeting, and a fee of \$5 shall be paid.

## §1776. USE OF WORD "COOPERATIVE"

No person, firm, corporation or association, domestic or foreign, hereafter commencing business in this State shall use the word "cooperative" as a part of its corporate or business name unless it has complied with this subchapter or some other statute of this State relating to cooperative associations. A foreign association organized under and complying with the cooperative law of the state of such association's creation shall be entitled to use the term "cooperative" in this State if it has obtained the privilege of doing business in this State.

## §1777. FOREIGN ASSOCIATIONS

A foreign corporation that can qualify as an association, as defined in section 1774, may be authorized to do business in this State under this subchapter by complying with the laws relating to foreign corporations doing business in the State. It shall pay the same fees and charges as domestic associations. Upon such compliance it shall have all the rights and privileges of like domestic associations.

## §1778. INDUCING BREACH OF CONTRACT; SPREADING FALSE REPORTS; PENALTY

### 1. Violation. A person may not:

A. Knowingly induce a member or stockholder of an association to violate the member's or stockholder's marketing contract with the association; [2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Knowingly attempt to induce a member or stockholder of an association to violate the member's or stockholder's marketing contract with the association; or [2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Intentionally or knowingly spread false reports about the finances or management of the association. [2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

**2. Penalties.** A person or corporation whose employees or officers violate this section commits a civil violation for which a fine of not less than \$100 and not more than \$1,000 may be adjudged for each such offense. In addition, the person or corporation is subject to a civil penalty of \$500 for each such offense, to be recovered in a civil action by the aggrieved association.

[2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

### SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §G1 (RPR).

## §1779. LICENSE FEES

Domestic associations and foreign associations admitted to do business in this State shall pay an annual license fee of \$10, which shall be in lieu of all other corporation and franchise taxes.

## §1780. SAVINGS CLAUSE

This subchapter shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to July 21, 1945, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if this subchapter had not been passed.

## §1781. NONPROFIT ASSOCIATIONS

An association is deemed "nonprofit," as the association is not organized to make a profit for that association or for its members, but only for its members as producers of agricultural products. [1993, c. 316, §11 (NEW).]

### SECTION HISTORY

1993, c. 316, §11 (NEW).

## §1782. GENERAL CORPORATION LAW; APPLICABILITY

The provisions of the laws related to business corporations and all powers and rights under those laws apply to associations, except when those provisions are in conflict with or inconsistent with the express provisions of this chapter. [1993, c. 316, §11 (NEW).]

### SECTION HISTORY

1993, c. 316, §11 (NEW).

## Article 2: ORGANIZATION AND POWERS

## §1821. INCORPORATORS

Five or more adult persons, engaged in agriculture as bona fide producers of agricultural products, or 2 or more associations of such producers, may form an association with or without capital stock.

## §1822. PURPOSES

Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

**1. Producing, selling, etc.** Producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping or utilizing such products, or manufacturing or marketing the by-products thereof;

**2. Equipment, feed, fertilizer, etc.** Manufacturing, buying for or supplying to its members and other patrons, machinery, equipment, feed, fertilizer, fuel, seeds and other agricultural and household supplies;

**3. Business or educational services.** Performing or furnishing business or educational services, on a cooperative basis, for or to its members and other patrons; or

**4. Financing.** Financing any of the above enumerated activities for its members, subject to the limitations of Title 9-B, section 466.

[ 1977, c. 564, §66 (AMD) .]

### SECTION HISTORY

1977, c. 564, §66 (AMD).



## §1823. ARTICLES OF INCORPORATION

The articles of incorporation must set forth: [ 2009, c. 56, §10 (AMD) . ]

**1. Name.** The name of the association which may or may not include the word "cooperative";

**2. Purposes.** Its purposes;

**3. Duration.** Its duration;

**4. Location of office.** The mailing address and physical address, if different, of its registered office in this State;

[ 2009, c. 56, §11 (AMD) . ]

**5. Name and address of incorporators; number of shares.** The name and mailing address and physical address, if different, of the incorporators, and if organized with capital stock, a statement of the number of shares subscribed by each, which may not be less than one, and the class of shares for which each subscribes;

[ 2009, c. 56, §12 (AMD) . ]

**6. Names and addresses of first directors.** The names and mailing addresses and physical addresses, if different, of the first directors;

[ 2009, c. 56, §13 (AMD) . ]

**7. With or without capital stock; if with, par value shares.** Whether organized with or without capital stock; and if organized with capital stock the total authorized number of par value shares and the par value of each share, and if any of its shares have no par value, the authorized number of such shares; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences and restrictions granted to or imposed upon the shares of each class and the dividends to which each class shall be entitled;

**8. If without, rights and interests of members.** If organized without capital stock, whether the property rights and interests of each member are equal or unequal; if unequal, the rule by which such rights and interests shall be determined; and

**9. Other provisions.** The articles may contain any other provisions, consistent with law for regulating the association's business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent such districts and the members residing therein, for voting by proxy, and issuance, retirement and transfer of memberships and stock.

### SECTION HISTORY

2009, c. 56, §§10-13 (AMD) .

## §1824. FILING AND RECORDING ARTICLES OF INCORPORATION

Before commencing business, the incorporators of every corporation organized under this subchapter shall prepare, sign, date and deliver for filing with the Secretary of State articles of incorporation, in a format approved by the Secretary of State, setting forth the information required under section 1823. The filing fee for a corporation formed under this subchapter is the same as for a corporation organized under Title 13-C. If articles of incorporation delivered for filing to the Secretary of State pursuant to this section satisfy the requirements of this subchapter, the Secretary of State shall file the articles of incorporation. The date of filing

is the date of receipt by the Secretary of State. After filing the articles of incorporation under this subchapter, the Secretary of State shall deliver to the corporation or its representative a copy of the document with an acknowledgement of the date of filing. [2009, c. 56, §14 (AMD).]

#### SECTION HISTORY

1977, c. 522, §8 (AMD). 2007, c. 231, §5 (AMD). 2009, c. 56, §14 (AMD).

## §1825. AMENDMENT OF ARTICLES

**1. Procedure.** An association may amend its articles of incorporation by the affirmative vote of 2/3 of the members voting thereon at any regular meeting, or at a special meeting called for the purpose, or if the association permits its members to vote on the basis of patronage, by the affirmative vote of a majority of the members representing 2/3 of the membership patronage voting thereon. A written or printed notice of the proposed amendment and of the time and place of holding such meetings shall be delivered to each member, or mailed to his last known address as shown by the books of the association, at least 30 days prior to any such meetings. No amendment affecting the preferential rights of any outstanding stock shall be adopted until the written consent of the holders of 2/3 of the outstanding preference shares has been obtained.

**2. Certificate recorded.** After an amendment has been adopted, the president or vice-president and the treasurer or secretary or assistant secretary shall prepare, sign, date and deliver for filing to the Secretary of State articles of amendment, in a format approved by the Secretary of State, setting forth the amendment adopted by the corporation as proposed in subsection 1. The filing fee for an amendment filed under this section is the same as for a corporation filing articles of amendment under Title 13-C. If articles of amendment delivered for filing to the Secretary of State pursuant to this section satisfy the requirements of this section, the Secretary of State shall file the articles of amendment. The date of filing is the date of receipt by the Secretary of State. After filing the articles of amendment under this section, the Secretary of State shall deliver to the corporation or its representative a copy of the document with an acknowledgement of the date of filing.

[ 2007, c. 231, §6 (AMD) .]

#### SECTION HISTORY

1977, c. 522, §9 (AMD). 2007, c. 231, §6 (AMD).

## §1826. BYLAWS

The members of the association may adopt bylaws not inconsistent with law or the articles, and they may alter and amend the same from time to time. The bylaws must be adopted by a majority of the members voting thereon, or if the association permits its members to vote on the basis of patronage, then by a majority of members and a majority of the patronage voting thereon. The bylaws may provide for:

**1. Meetings; quorum.** The time, place and manner of calling and conducting meetings of the members, and the number of members that shall constitute a quorum;

**2. Manner of voting.** The manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations, and the voting power of votes based on patronage;

**3. Provisions as to directors and officers.** Subject to any provision thereon in the articles and in this subchapter, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;

**4. Meetings of directors and executive committee; quorum.** The time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;

**5. Rules.** Rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of contracts, the issuance, retirement and transfer of stock, and the relative rights, interests and preferences of members and shareholders; and

**6. Penalties.** Penalties for violation of the bylaws.

## **§1827. GENERAL AND SPECIAL MEETINGS**

An association may provide in its bylaws for one or more regular meetings each year, which may be held within or without the State at the time and place designated in the bylaws. Special meetings of the members may be called by the board of directors, and it shall be their duty to call such meetings when 10% of the members file with the secretary a petition demanding a special meeting and specifying the business to be considered at such meeting. Notice of all meetings, except as otherwise provided by law, or the articles or bylaws, shall be mailed to each member at least 10 days prior to the meeting, and in case of special meetings the notice shall state the purposes for which it is called, but the bylaws may require that all notices, except of proposed amendments to the articles, shall be given by publication in a periodical published by or for the association, to which substantially all its members are subscribers, or in a newspaper or newspapers whose combined circulation is general in the territory in which the association operates.

## **§1828. POWERS**

**1. Capacity to act.** An association formed under this subchapter, or an association which might be formed under this subchapter and which existed at the time this Act took effect, shall have the capacity to act possessed by natural persons, but such association shall have authority to perform only such acts as are necessary or proper to accomplish the purposes as set forth in its articles and which are not repugnant to law.

**2. Authority.** Without limiting or enlarging the grant of authority contained in subsection 1, it is specifically provided that every such association shall have authority:

A. To act as agent, broker or attorney in fact for its members and other patrons, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and other patrons and for subsidiary and affiliated associations to property handled or managed by the association on their behalf;

B. To make contracts, and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association;

C. To make loans or advances to members or producer-patrons against products delivered or to be delivered to the association, or to the members of an association which is itself a member or subsidiary thereof; to purchase, otherwise acquire, indorse, discount or sell any evidence of debt, obligation or security, but it shall not engage in banking;

D. To establish and accumulate reserves;

E. To own and hold membership in or shares of the capital stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing or marketing or purchasing any of the products handled by the association; or, in financing its activities, and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon;

F. To acquire, hold, sell, dispose of, pledge or mortgage any property which its purposes may require, subject to any limitation prescribed by law or its articles;

G. To borrow money and to give its notes, bonds or other obligations therefor and secure the payment thereof by mortgage or pledge;

H. To deal in products of, and handle machinery, equipment, supplies and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members, but the value of the annual purchases made for persons who are neither members nor producers shall not exceed 15% of the value of all its purchases;

I. To have a corporate seal and to alter the same at pleasure;

J. To continue as a corporation for the time limited in its articles, and if no time limit is specified, then perpetually;

K. To sue and be sued in its corporate name;

L. To conduct business in this State and elsewhere as may be permitted by law; and

M. To dissolve and settle its affairs.

## §1829. INFORMATION AND ADVICE FOR MEMBERS

**1. Not in restraint of trade.** No association complying with the terms hereof shall be deemed to be a conspiracy, or a combination in restraint of trade or an illegal monopoly; or be deemed to have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its members, or any agreements authorized in this subchapter, be construed as an unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

**2. Information.** An association may acquire, exchange, interpret and disseminate to its members, to other cooperative associations and otherwise, past, present and prospective crop, market, statistical, economic and other similar information relating to the business of the association, either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

**3. Advice.** An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.

## Article 3: OFFICERS AND DIRECTORS

### §1871. DIRECTORS

**1. Membership; term.** The business of the association is managed by a board of not less than 3 directors. The directors must be members of the association or officers, general managers, directors or members of a member association, except that the members of the association may elect, pursuant to the bylaws of the association, to allow the election of nonmember directors of the association by the board of directors, as long as the number of nonmember directors does not exceed 25% of the total number of duly elected member directors. A director shall hold office for the term for which the director was named or elected and until the director's successor is elected and qualified.

[ 2009, c. 5, §1 (AMD) .]

**2. Names; successors.** The names of the first directors shall be stated in the articles. Their successors shall be elected by the members as prescribed by the articles or bylaws.

**3. Duties, etc. prescribed by articles or bylaws.** The number, qualifications, terms of office, manner of election, time and place of meeting and the powers and duties of the directors may, subject to this subchapter, be prescribed by the articles or bylaws.

**4. District directors.** The bylaws may provide, if not restricted by the articles, that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such case, the bylaws shall specify or vest in the board of directors authority to determine the number of directors to be elected by each district and the manner and method of apportioning the directors and of districting and redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to nominate the directors apportioned thereto and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered as a final election.

**5. Executive committee.** The bylaws may provide for an executive committee to be elected by the board of directors from their number and may allot to such committee all the functions and powers of the board, subject to its general direction and control.

#### SECTION HISTORY

2009, c. 5, §1 (AMD).

### **§1872. -- REMOVAL**

Any member may ask for the removal of a director by filing charges with the secretary or president of the association, together with a petition signed by 5% of the members requesting the removal of the director in question. The removal shall be voted upon at the next meeting of the members, and by 2/3 of the voting power voting thereon the association may remove the director. The director whose removal is requested shall be served with a copy of the charges not less than 10 days prior to the meeting and shall have an opportunity at the meeting to be heard in person and by counsel and to present evidence. The persons requesting the removal shall have the same opportunity. In case the bylaws provide for election of directors by districts, then the petition for removal of a director must be signed by 20% of the members residing in the district from which he was elected. The board must call a special meeting of the members residing in that district to consider the removal of the director, and by 2/3 of the voting power of the members of that district voting thereon the director in question may be removed from office.

### **§1873. OFFICERS**

The board shall elect one or more officers as authorized in the bylaws. The bylaws of each cooperative must provide for one or more officers, including the qualifications for and the titles of those officers.  
[1999, c. 48, §1 (AMD).]

#### SECTION HISTORY

1999, c. 48, §1 (AMD).

### **§1874. -- REMOVAL**

Any member may bring charges of misconduct or incompetency against an officer by filing them with the secretary or president of the association, together with a petition signed by 10% of the members requesting the removal of the officer in question. The directors shall vote upon the removal of the officer at the first meeting of the board held after the hearing on the charges, and the officer may be removed by a majority vote, notwithstanding any contract the officer may have with the association, which shall terminate upon his removal, anything in the contract to the contrary notwithstanding. The officer against whom such charges are made shall be served with a copy of the charges not less than 10 days prior to the meeting, and shall have an opportunity at the meeting to be heard in person and by counsel, and to present evidence, and the persons making the charges shall have the same opportunity.

## §1875. REFERENDUM

The articles or bylaws may provide that upon demand of 2/5 of all the directors, any matter of policy that has been approved or passed by the board must be referred to the members for their approval before it becomes effective. No referendum shall be allowed unless it is demanded by the required number of directors at the meeting at which the matter of policy in question is adopted.

### Article 4: MEMBERS AND SHARES

## §1911. MEMBERS

**1. Producers of agricultural products.** An association may admit as members only bona fide producers of agricultural products, including tenants and landlords receiving a share of the crop, and cooperative associations of such producers. The incorporators named in the articles are thereby made members of the association, and they shall pay for their membership or stock the same amount and in the same manner as may be required in the case of other members.

**2. Limit of common stock.** The articles may limit the amount of common stock which a member may own.

**3. Vote; liability.** Under the terms and conditions prescribed in the bylaws, a member shall lose his vote if he ceases to belong to the class eligible to membership under this section, but he shall remain subject to any liability incurred by him while a member of the association.

**4. Personal liability.** No member shall be personally liable for any debt or liability of the association.

**5. One vote.** Unless the articles otherwise provide, no member shall have more than one vote.

**6. Member defined.** In agricultural associations organized under this subchapter the term "member" in associations without capital stock may, by the bylaws, include any agricultural producer, either corporate or individual, with whom the association shall do business, either directly or through a member cooperative association, amounting to at least \$100 during any fiscal year, and may, by the bylaws, include employees.

**7. Requirements of statute met.** Whenever under this subchapter an association is permitted to take any action, provided such action is authorized by a vote of the members or the vote of a specified proportion of the voting power based on patronage, the requirements of the statute shall be deemed to have been met by an association which has established voting districts and provided for the election of delegates, if such action is authorized by a vote of the delegates representing such members or such voting power.

## §1912. CERTIFICATES; TRANSFERS; DIVIDENDS; PREFERRED STOCK

**1. Certificate for membership or stock.** No certificate for membership or stock shall be issued until fully paid for, but bylaws may provide that a member may vote and hold office prior to payment in full for his membership or stock.

**2. Dividends.** Dividends in excess of 8% on the actual cash value of the consideration received by the association shall not be paid on common or preferred stock or membership capital, but dividends may be cumulative.

**3. Net income distributed.** Net income in excess of dividends and additions to reserves shall be distributed on the basis of patronage, and the books of the association shall show the interest of patrons in the reserves. The bylaws may provide that any distribution to a nonmember, eligible for membership, may be credited to such nonmember until the amount thereof equals the value of a membership certificate or a share of the association's common stock. The distribution credited to the account of a nonmember may be transferred to the reserve fund at the option of the board if, after 6 years, the amount is less than the value of the membership certificate or a share of common stock.

**4. Value of member's interest after withdrawal or termination.** The bylaws may fix a time within which a member shall receive from the association, after he has notified the association of his withdrawal, or after the adoption of a resolution by the board terminating his membership, the value in money of his membership interest in the association as appraised by the board of directors. If the board of directors approves the member's designation of a transferee of his membership interest, the association shall be under no obligation to pay him the value of his interest.

**5. Preferred stock.** An association may issue preferred stock to members and nonmembers. Preferred stock may be redeemed or retired by the association on such terms and conditions as may be provided in the articles and printed on the stock certificate. Preferred stockholders shall not be entitled to vote, but no change in their priority or preference rights shall be effective until the written consent of the holders of 2/3 of the preferred stock has been obtained. Payment for preferred stock may be made in cash, services or property on the basis of the fair value of the stock, services and property as determined by the board.

## Article 5: CONSOLIDATION AND DISSOLUTION

### §1951. CONSOLIDATION PROCEDURE

Any 2 or more associations organized with or without capital stock and existing under this subchapter may consolidate into a single association which may be either one or any one of said associations, or a new association under this subchapter to be formed by means of such consolidation. Such a consolidation may be effected by a vote of the directors, trustees or managing board, however designated, of each of said associations at a legal meeting thereof ratifying a proposed agreement of consolidation and approved by the affirmative vote of 2/3 of the members of each of said associations voting thereon at any regular meeting or at a special meeting called for the purpose, which agreement shall then be submitted to the Secretary of State for his certification as conformable to the laws of this State and when certified by him shall then be recorded in the registry of deeds in the county where the consolidated association is located and in the county or counties where each of the constituent associations is located and a copy thereof certified by the register of deeds shall be filed in the office of the Secretary of State. When said agreement is so certified, recorded and filed, the separate existence of all of the constituent associations, or all of such constituent associations except the one into which such constituent associations shall have been consolidated, shall cease and the constituent associations, whether consolidated into a new association or merged into one of such constituent associations, as the case may be, shall become the consolidated association by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities, restrictions and duties of each of such associations so consolidated and all and singular the rights, privileges, powers, franchises and immunities of each of said associations, and all property, real, personal and mixed, and all debts due to any of said constituent associations on whatever account, and all other things in action of or belonging to each of said associations shall be vested in the consolidated association. All property, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the consolidated association as they were of the several and respective constituent associations, and the title to any real estate, whether by deed or otherwise, under the laws of this State, vested in any of such constituent associations, shall not revert or be in any way impaired by reason thereof. All rights of creditors and all liens upon the property of any of said constituent associations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent associations shall henceforth attach to said consolidated association and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. [1977, c. 522, §10 (AMD).]

#### SECTION HISTORY

1977, c. 522, §10 (AMD).

### §1952. VOLUNTARY DISSOLUTION

#### 1. Dissolution.

A. The members of an association may at any regular meeting, or any special meeting called for the purpose, upon 30 days' notice of the time, place and object of the meeting having been given as prescribed in the bylaws, by 2/3 of the voting power voting thereon, discontinue the operations of the association and direct that the association be dissolved and its affairs settled. The members at the meeting shall by like vote designate a committee of 3 members who, as trustees on behalf of the association and within the time fixed in their designation or any extension thereof, shall liquidate the association's assets, pay its debts and divide any remainder among the members or other patrons in accordance with their respective rights and interests under their contracts with the association and the articles and bylaws. Upon final settlement by such trustees, the association is deemed dissolved and ceases to exist. The trustees shall file articles of dissolution as required by subsection 5. [ 2007, c. 231, §7 (AMD) . ]

B. The trustees may bring and defend all actions by them deemed necessary to protect and enforce the rights of the association.

C. Any vacancies in the trusteeship may be filled by the remaining trustees.

[ 2007, c. 231, §7 (AMD) . ]

**2. Power of courts.** In the case of an association dissolving pursuant to this section, the Superior Court, upon the petition of the trustees or a majority of them, or a proper case upon the petition of a creditor or member, or upon the petition of the Attorney General, upon notice to all of the trustees and to such other interested persons as the court may specify, from time to time may order and adjudge in respect to the following matters:

A. The giving of notice by publication or otherwise of the time and place for the presentation of all claims and demands against the association, which notice may require all creditors of and claimants against the association to present in writing and in detail at the place specified in their respective accounts and demands to the trustees by a day therein specified, which shall not be less than 40 days from the service or first publication of such notice;

B. The payment or satisfaction in whole or in part of claims and demands against the association or the retention of moneys for such purpose;

C. The presentation and filing of intermediate and final accounts of the trustees, the hearing thereon, the allowance or disallowance thereof and the discharge of the trustees, or any of them, from their duties and liabilities;

D. The administration of any trust or the disposition of any property held in trust by or for the association;

E. The sale and disposition of any remaining property of the association and the distribution or division of such property or its proceeds among the members or persons entitled thereto; and

F. Such matters as justice may require.

**3. Orders and judgments binding.** All orders and judgments shall be binding upon the association, its property and assets, its trustees, members, creditors and all claimants against it.

**4. Application of section.** This section shall apply to all associations heretofore or hereafter incorporated in this State.

**5. Filing with the Secretary of State.** In addition to the requirements set forth in this section, a corporation organized under this subchapter must file articles of dissolution and pay the fee for dissolution as required for business corporations under Title 13-C.

[ 2007, c. 231, §8 (NEW) . ]

## SECTION HISTORY



2007, c. 231, §7, 8 (AMD).

## Article 6: MAINE AGRICULTURAL MARKETING AND BARGAINING ACT OF 1973

### §1953. LEGISLATIVE FINDINGS AND PURPOSE

Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Furthermore, membership by a farmer in a cooperative organization can only be meaningful, if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative organization as the representative of the members of such organization who have had a previous course of dealing with such handler. The purpose of this Article is to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, sale and marketing of agricultural products and to provide for the enforcement of such obligation. [1973, c. 621, §1 (NEW).]

#### SECTION HISTORY

1973, c. 621, §1 (NEW).

### §1954. SHORT TITLE

Article 6 shall be known and may be cited as the "Maine Agricultural Marketing and Bargaining Act of 1973." [1973, c. 621, §1 (NEW).]

#### SECTION HISTORY

1973, c. 621, §1 (NEW).

### §1955. DEFINITIONS

As used in this Article, unless the context otherwise requires, the following words shall have the following meanings. [1973, c. 621, §1 (NEW).]

**1. Association of producers.** "Association of producers" means any association of producers of agricultural products organized and existing under this subchapter.

[ 1973, c. 621, §1 (NEW) .]

**2. Board.** "Board" means the Maine Agricultural Bargaining Board provided for in this Article.

[ 1973, c. 621, §1 (NEW) .]

**3. Handler.** "Handler" means any person engaged in the business or practice of:

A. Acquiring agricultural products from producers or associations of producers for processing or sale; [1973, c. 621, §1 (NEW).]

B. Grading, packaging, handling, storing or processing agricultural products received from producers or associations of producers; [1973, c. 621, §1 (NEW).]

C. Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or [1973, c. 621, §1 (NEW).]

D. Acting as an agent or broker for a handler in the performance of any function or act specified in paragraph A, B or C. [1973, c. 621, §1 (NEW).]

In the case of potatoes, "handler" means a processor as defined under Title 7, section 1012, subsection 14 or a person or company acting as an agent, broker or dealer as defined under Title 7, section 1012, subsections 1, 3 and 5, respectively, for a processor located or licensed in the State and providing more than 100,000 hundredweight of potatoes annually to any one processor.

[ 2007, c. 499, §2 (AMD) .]

**4. Person.** "Person" includes one or more individuals, partnerships, corporations and associations.

[ 1973, c. 621, §1 (NEW) .]

**5. Producer.** "Producer" means a person engaged in the production of agricultural products, excluding forest products, as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable or nut grower, or independent agricultural contractor as specified in section 1774, subsections 6-A and 8-A. If producer is also a handler, he shall be considered only a handler for the purposes of this Act.

[ 1973, c. 621, §1 (NEW) .]

**6. Qualified association.** "Qualified association" means an association of producers accredited in accordance with section 1957.

[ 1973, c. 621, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 2007, c. 499, §2 (AMD).

## §1956. MAINE AGRICULTURAL BARGAINING BOARD

**1. Board.** The Maine Agricultural Bargaining Board, established by Title 5, section 12004-B, subsection 7, and located in the Department of Agriculture, Conservation and Forestry, shall administer this article.

[ 1989, c. 503, Pt. B, §69 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

**2. Membership.** The Maine Agricultural Bargaining Board established by Title 5, section 12004-B, subsection 7, shall consist of 5 members and 2 alternates, who shall be appointed by the Governor. One member and one alternate shall be appointed from a list of names submitted by agricultural producer organizations organized under this subchapter and chapter 81. One member and one alternate shall be appointed from a list of names submitted by processors of agricultural products. In appointing these members and alternates, the Governor shall seek to represent as many different agricultural products as possible and a member and the alternate for that member may not be associated with the same agricultural product, unless suitable persons cannot otherwise be appointed. An alternate shall serve when for any reason the respective member is unable to serve. Three members shall be representatives of the public. A public member may not hold any interest or stock or securities in any producer, dealer, processor or other person whose activities are subject to the jurisdiction of the board.

A. The term of office for all members and alternates shall be 3 years. Members selected from lists submitted by agricultural producer organizations and by processors of agricultural products may serve no more than 2 terms in succession, not to include the current term of a member serving at the time this section becomes effective. The limitation to 2 successive terms may not apply to the public members or to alternates. [1989, c. 703, §1 (AMD) .]

B. Board members serving at the time this section becomes effective shall continue as members for the duration of their present terms. The Governor shall appoint 2 alternate members in accordance with this subsection. The initial terms of these alternates expire at the same time as that of the current respective members. The Governor shall designate one of the public members to be the board's chair. In the event

of a vacancy, the Governor shall, within one month, appoint a successor to fill the unexpired term. All appointments to the board must be made in conformity with the foregoing plan. Members shall take the oath of office prescribed for state officers. [1989, c. 503, Pt. B, §70 (AMD); 1989, c. 703, §1 (AMD).]

[ 1989, c. 503, Pt. B, §70 (AMD); 1989, c. 703, §1 (AMD) .]

**3. Removal.** Members of the board shall be removed by the Commissioner of Agriculture, Conservation and Forestry upon notice and hearing for neglect of duty or malfeasance in office but for no other cause. If a member is absent from 3 successive meetings of the board and if the board finds the member's reasons for the absence to be without merit, that member's conduct shall be considered to be neglect of duty.

[ 1987, c. 155, §3 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

**4. Quorum.** A vacancy in the board shall not impair the right of the remaining members to exercise all of the powers of the board. Three members of the board shall, at all times, constitute a quorum of the board, provided that reasonable notice has been given to all members of the board of the subject matter and date of any meeting at which the board is to exercise any of its powers.

[ 1973, c. 621, §1 (NEW) .]

**5. Expenses.** Members and alternate members of the board shall be compensated according to the provisions of Title 5, chapter 379 and shall receive necessary expenses.

[ 1987, c. 155, §4 (AMD) .]

**6. Rules.** The board shall have authority from time to time to adopt, amend and repeal, in the manner prescribed by the Maine Administrative Procedure Act, such rules and regulations as may be necessary or appropriate to carry out this Article. The board shall act as expeditiously as possible to adopt interpretive and procedural rules for carrying out the purposes of this article.

[ 1987, c. 155, §5 (AMD) .]

**7. Board's staff and attorney.** In hearings under sections 1958 and 1965, neither the board's staff nor its attorney shall function as an advocate for any party.

[ 1987, c. 155, §6 (NEW) .]

**8. Annual report.** The board shall issue an annual report to the Commissioner of Agriculture, Conservation and Forestry and to the joint standing committee of the Legislature having jurisdiction over agriculture on or before January 15th of each year regarding the operation of this subchapter. This annual report shall take into consideration the following issues as the Maine Agricultural Bargaining Board reviews the effectiveness of the Maine Agricultural Marketing and Bargaining Act of 1973:

- A. Unfair practices; [1987, c. 155, §6 (NEW).]
- B. Qualification of grower associations; [1987, c. 155, §6 (NEW).]
- C. Funding of the Maine Agricultural Bargaining Board; [1987, c. 155, §6 (NEW).]
- D. Investigation and hearing procedures; [1987, c. 155, §6 (NEW).]
- E. Any other issues relating to this subchapter; and [1987, c. 155, §6 (NEW).]

F. Any recommended changes to this subchapter. [1987, c. 155, §6 (NEW).]

[ 1987, c. 155, §6 (NEW); 2011, c. 657, Pt. W, §6 (REV) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 1977, c. 564, §§67,68 (AMD). 1977, c. 694, §277 (AMD). 1979, c. 731, §19 (AMD). 1983, c. 812, §§95,96 (AMD). 1987, c. 155, §§2-6 (AMD). 1989, c. 503, §§B69,B70 (AMD). 1989, c. 703, §1 (AMD). 2011, c. 657, Pt. W, §§5, 6 (REV).

## §1957. QUALIFICATION OF ASSOCIATIONS OF PRODUCERS

**1. Qualification.** Only those associations of producers that have been qualified in accordance with this section shall be entitled to the benefits provided by this Article.

[ 1973, c. 621, §1 (NEW) .]

**2. Petition.** An association of producers desiring qualification shall file with the board a petition for qualification. The petition shall contain such information and be accompanied by such documents as shall be required by the regulations of the board.

[ 1973, c. 621, §1 (NEW) .]

**3. Hearing.** The board shall provide notice and opportunity for a hearing, provided in a manner consistent with the provisions as to adjudicatory proceedings of the Maine Administrative Procedure Act. The board shall qualify such association, if based upon the evidence at such hearing, the board finds:

A. That under the charter documents or the bylaws of the association, the association is directly or indirectly producer-owned and controlled; [1973, c. 621, §1 (NEW).]

B. The association has membership agreements signed by each of its members which authorize the association to represent the member for the purposes of this article; [1987, c. 155, §7 (AMD) .]

C. The association is financially sound and has sufficient resources and management to carry out the purposes for which it was organized; [1973, c. 621, §1 (NEW).]

D. The association represents 51% of the producers or produced at least 1/2 of the volume of a particular agricultural product for a specific handler involved with those producers and that agricultural product during the previous 12 months, not including any volume produced by the handler, its subsidiaries, agents or employees or procured by the handler from sources other than producers; for the purposes of this article, members of farmer cooperatives are counted as individual farmer members; if the board has reasonable cause to question such representation, the board shall require a secret ballot election to certify the percentage of representation; and [1991, c. 116, (AMD) .]

E. The association has as one of its functions acting as principal or agent for its producer-members in negotiations with handlers for prices and other terms of contracts with respect to the production, sale and marketing of their product. [1973, c. 621, §1 (NEW).]

[ 1991, c. 116, (AMD) .]

**4. Refiling of petition.** If after the hearing, the board does not deem an association qualified, it shall, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, clearly specify the reasons for such failure to qualify in its decision and, upon the refile of the petition, shall reconsider its decision within 30 days after the date on which the petition was filed. An association seeking reconsideration shall refile its petition within 30 days of receipt of the board's initial decision.

[ 1987, c. 155, §8 (AMD) . ]

**5. Notice.** After the board qualifies such association, it shall give notice of such qualification to all known handlers that, in the ordinary course of business, purchase the agricultural commodities that such association represents.

[ 1973, c. 621, §1 (NEW) . ]

**6. Annual report.** A qualified association shall file an annual report with the board in such form as shall be required by the regulations of the board. The annual report shall contain such information as will enable the board to determine whether the association continues to meet the standards for qualification, except that an association which the board has determined to be qualified shall not be required to have its qualification redetermined until it has negotiated and entered into a contract with a handler, with or without resort to arbitration.

[ 1985, c. 578, §1 (AMD) . ]

**7. Revocation.** If a qualified association ceases to maintain the standards for qualifications set forth in subsection 3, the board shall, in a manner consistent with the Maine Administrative Procedure Act, apply to the District Court to revoke the qualification of such association, except that the board shall not seek revocation of an association's qualification during the period set out in subsection 6 in which the association cannot be required to have its qualification redetermined.

[ 1985, c. 578, §2 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) . ]

**8. Confidentiality.** Information provided to the board by an association regarding the identification of its members and information provided to the board by a handler regarding its volume of purchases of agricultural products and the identification of producers from whom it purchased those products shall be treated by the board as confidential information not to be disclosed to the adverse party or any other person without the consent of the association or the handler, respectively, until the board has rendered its final decision as to the qualification of the association. After a final decision has been rendered, the information is no longer confidential information, but its disclosure shall be governed by Title 1, section 402, subsection 3, paragraph B.

[ 1987, c. 155, §9 (NEW) . ]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 1977, c. 694, §§278-280 (AMD). 1985, c. 578, §§1,2 (AMD). 1987, c. 155, §§7-9 (AMD). 1991, c. 116, (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

## §1958. BARGAINING

**1. Definition.** As used in this article, "bargaining" is the mutual obligation of a handler and a qualified association to meet at reasonable times and negotiate in good faith with respect to the price, terms of sale, compensation for commodities produced or sold, or both, under contract and other contract provisions relative to the commodities that such qualified association represents and the execution of a written contract

incorporating any agreement reached if requested by either party. Such obligation on the part of any handler shall extend only to a qualified association that represents producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession. The obligation to bargain continues until the commencement of required mediation, as provided in section 1958-B, subsection 2.

[ 1987, c. 155, §10 (AMD) .]

**2. Prior course of dealing.** A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer in any 2 of the preceding 3 years, provided that the sale by a handler of his business shall not negate any prior course of dealing that producers have had with this business.

[ 1973, c. 621, §1 (NEW) .]

**3. Contracts.** Nothing in this Article shall be deemed to prohibit a qualified bargaining association from entering into contracts with handlers to supply the full agricultural production requirements of such handlers.

[ 1973, c. 621, §1 (NEW) .]

#### **4. Limitation.**

[ 1987, c. 155, §11 (RP) .]

**5. Further limitation.** It shall be unlawful for a handler to purchase a product from other persons under terms more favorable to such persons than those terms negotiated with a qualified bargaining association for such product, unless such handler has first offered to purchase said product under said more favorable terms from the members of the qualified association of producers and said members have failed to supply the required product within a reasonable time according to said more favorable terms.

[ 1973, c. 621, §1 (NEW) .]

**6. Notice; opportunity for hearing.** Whenever it is charged that a qualified association or handler refuses to bargain, as that term is defined in subsection 1, the board shall provide that person with notice and opportunity to be heard, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory hearings.

[ 1987, c. 155, §12 (AMD) .]

**7. Hearing.** Hearings held pursuant to subsection 6 shall be held in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory hearings. The board shall request that the Attorney General, or any attorney in his department designated by him, be present at these hearings and shall advise the board on procedure and on the admissibility of any evidence.

[ 1977, c. 694, §282 (RPR) .]

**8. Findings.** If, upon a preponderance of the evidence, the board determines that the person complained of has refused to bargain, in violation of this article, it shall state its findings of fact and shall issue an order requiring him to bargain as that term is defined in subsection 1 and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this article. Failure to comply with such an order is a violation of this article. If the board determines that the person complained of has not refused to bargain, it shall state its findings of fact and shall issue an order dismissing the charges.

[ 1987, c. 155, §13 (AMD) .]

## 9. Dismissal.

[ 1977, c. 694, §283 (RP) .]

**10. Modification.** Until the record in a case has been filed in a court, as provided in section 1959, the board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in a whole or in part, any finding or order made or issued by it.

[ 1973, c. 621, §1 (NEW) .]

### SECTION HISTORY

1973, c. 621, §1 (NEW). 1977, c. 694, §§281-283 (AMD). 1987, c. 155, §§10-13 (AMD).

## **§1958-A. FINAL OFFER ARBITRATION FOR THE POTATO INDUSTRY** **(REPEALED)**

### SECTION HISTORY

1981, c. 274, (NEW). 1985, c. 578, §§3,4 (AMD). 1987, c. 155, §14 (RP).

## **§1958-B. DISPUTE RESOLUTION**

**1. Voluntary mediation.** At any time prior to the commencement of required mediation under subsection 2, a handler and a qualified association may mutually agree to obtain or may unilaterally obtain the services of a mediator. Regardless whether mediation is sought mutually or unilaterally, both parties shall participate in mediation in good faith. The parties must use the services of the State's Panel of Mediators for mediation and must share all costs of mediation equally. Costs of mediation and any applicable state cost allocation program charges must be paid into a special fund administered by the Maine Labor Relations Board. The Executive Director of the Maine Labor Relations Board shall authorize mediation services and expenditures incurred by members of the panel. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. Voluntary mediation may not last for more than 3 days for annual crops; voluntary mediation for all other commodities may not last more than 5 days. Mediation may be extended by mutual agreement by the bargaining parties.

[ 1991, c. 798, §1 (AMD) .]

**2. Required mediation.** Any matters remaining in dispute between the handler and a qualified association 30 days prior to the contract date, as defined in subsection 4, must be submitted by the parties to required mediation. No later than 30 days prior to the contract date, the parties must have mutually agreed on a mediator and on sharing the costs of mediation or must have notified the board that the services of the State's Panel of Mediators will be needed. If services of the State's Panel of Mediators are used, the parties shall share all costs of mediation equally. Mediation may not continue for more than 3 consecutive business

days for annual crops; all other commodities may not last more than 5 days, unless the mediator earlier declares that resolution by mediation is not possible. Mediation may be extended by mutual agreement by the bargaining parties. At the end of the mediation period or upon the mediator's earlier declaration, the mediator shall promptly prepare a report specifying all agreements reached in mediation and recommending that the parties either resume bargaining as to all matters remaining in dispute for a period of time not to exceed 2 days or that the parties submit all matters remaining in dispute to arbitration. The parties shall proceed according to the mediator's recommendation. If the parties are to resume bargaining, that bargaining must commence on the day after the day on which the mediator makes the recommendation. Any matters remaining in dispute at the end of the specified bargaining period must be submitted to arbitration.

[ 2003, c. 329, §5 (AMD) .]

**3. Different contract date.** Once a contract date has been established as provided in subsection 2, the parties may mutually agree to a different contract date, provided that they do so no less than 45 days prior to the contract date established as provided in subsection 4.

[ 1987, c. 155, §15 (NEW) .]

**4. Definition.** The term "contract date" as used in subsection 2, shall have the following meaning.

A. Where, on the effective date of this section, there is no contract under this article in existence between the parties, the contract date shall be the date set by the board, in consultation with the parties, as the date by which a contract must be signed by both parties. After that date, as between those parties, the contract date shall be the anniversary of the date set by the board initially. [1987, c. 155, §15 (NEW) .]

B. Where, on the effective date of this section, a contract under this article exists between the parties, the contract date shall be the anniversary of the date upon which that contract was signed by both parties. [1987, c. 155, §15 (NEW) .]

[ 1987, c. 155, §15 (NEW) .]

**5. Arbitration.** The parties shall notify the board and the Commissioner of Agriculture, Conservation and Forestry at the commencement of required mediation and an arbitrator must be selected as provided in paragraph D. One day after the mediator recommends arbitration or one day after the conclusion of the period of further bargaining, as provided in subsection 2, each party shall submit to the arbitrator its final offer in which it shall identify all matters as to which the parties agree with contractual language setting forth these agreements, and all matters as to which the parties do not agree with contractual language setting forth the party's final offer for resolution of those disagreements.

A. For all matters submitted to arbitration, the arbitrator shall choose between the final offers of the parties. If the parties reach an agreement on the matters under arbitration before the arbitrator issues a decision, they may submit a joint final offer that the arbitrator shall accept and render as the decision. The arbitrator may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of records. A person who fails to obey the subpoena of an arbitrator may be punished for contempt of court on application by the arbitrator to the Superior Court for the county in which the failure occurs. The arbitrator may utilize other information in addition to that provided by or elicited from the parties. The arbitrator shall issue a decision within 10 days of the commencement of arbitration and that decision shall be binding on the parties. If the parties reach an agreement on the matters in the arbitrator's decision prior to signing the contract, they may submit a joint final offer to the arbitrator. The arbitrator shall rescind the previous decision and accept and render the joint final offer as the decision. [1989, c. 703, §2 (RPR) .]



B. Within 5 days of the arbitrator's decision, the board shall prepare a contract which must include all terms agreed to by the parties in bargaining or settled by voluntary or required mediation or by arbitration and must present the contract to the parties who shall sign the contract within 2 days of its presentation. [1989, c. 703, §2 (RPR).]

C. The commissioner, in consultation with the board, shall establish a panel of arbitrators, who must be qualified by education, training or experience to carry out the responsibilities of an arbitrator under this article. [1989, c. 703, §2 (RPR).]

D. Upon notification by the parties as provided in this subsection, the commissioner shall submit to the parties a list containing an odd number of names of members of the panel of arbitrators who are available for the specific pending arbitration and have expressed a willingness to serve. The parties shall alternately strike names from the list until a single name is left, who shall serve as the arbitrator. The order of striking names must be determined by chance. [2003, c. 329, §6 (AMD).]

E. All costs of arbitration must be borne equally by the parties. The arbitrator shall submit a statement of charges and expenses to the parties and to the board. Each party shall pay the arbitrator directly. [1989, c. 703, §2 (RPR).]

[ 2003, c. 329, §6 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

**5-A. Criteria for arbitrator decisions.** The arbitrator shall consider the following factors in making a decision pursuant to subsection 5:

A. Prices or projected prices for the agricultural commodity paid by competing handlers in the market area or competing market areas; [1989, c. 703, §3 (NEW).]

B. The quantity of the commodity produced or projections of production in the production area or competing market areas; [1989, c. 703, §3 (NEW).]

C. The relationship between the quantity produced and the quantity handled by the handler; [1989, c. 703, §3 (NEW).]

D. The producer's costs of production including the cost that would be involved in paying farm labor a fair wage rate; [1989, c. 703, §3 (NEW).]

E. The average consumer prices for goods and services, commonly known as the cost of living; [1989, c. 703, §3 (NEW).]

F. The impact of the award on the competitive position of the handler in the market area or competing market areas; [1989, c. 703, §3 (NEW).]

G. The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities; [1989, c. 703, §3 (NEW).]

H. A fair return on investment; [1989, c. 703, §3 (NEW).]

I. The kind, quality or grade of the commodity involved; [1989, c. 703, §3 (NEW).]

J. Prior agreements of the parties; and [1989, c. 703, §3 (NEW).]

K. Other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved. [1989, c. 703, §3 (NEW).]

[ 1989, c. 703, §3 (NEW) .]

**6. Violation.** Failure by a party to comply with any of the requirements of this section is a violation of this article.

[ 1987, c. 155, §15 (NEW) .]

#### SECTION HISTORY

1987, c. 155, §15 (NEW). 1989, c. 201, §§1,2 (AMD). 1989, c. 703, §§2,3 (AMD). 1991, c. 622, §01 (AMD). 1991, c. 798, §1 (AMD). 2003, c. 329, §§5,6 (AMD). 2011, c. 657, Pt. W, §6 (REV).

## §1959. ENFORCEMENT OF ORDERS AND JUDICIAL REVIEW

**1. Complaint.** The board shall have power to complain to the Superior Court for the enforcement of its orders made under sections 1958 and 1965 and for appropriate temporary relief or restraining order, and shall file in the court the original or certified copy of the entire record in the proceeding, and shall cause notice of such complaint to be served upon such person, and said court shall thereupon have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No objection that has not been urged before the board may be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

[ 1987, c. 155, §16 (AMD) .]

### **2. Appeal.**

[ 1977, c. 694, §284 (RP) .]

**3. Stay.** The provisions of Title 5, section 11004, shall govern with respect to any application for a stay of an order of the board.

[ 1987, c. 155, §17 (AMD) .]

### **4. Procedure.**

[ 1977, c. 694, §286 (RP) .]

**5. Penalties.** In an action to enforce an order or in a separate action, the board may seek civil penalties for violation of this article. In any such action, a violation shall be punishable by a civil penalty of not more than \$5,000. When the violation is a refusal to bargain under section 1958 or an unfair practice under section 1965, each day that such conduct occurred shall constitute a separate violation. If a qualified association is found to have committed a violation under sections 1958 and 1965, and if a civil penalty is imposed, and if the court finds that the association is unable to pay the civil penalty, the court shall instead issue an order suspending for one year the association's rights as a qualified association under this article.

[ 1987, c. 155, §18 (NEW) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 1973, c. 788, §54 (AMD). 1977, c. 694, §§284-286 (AMD). 1987, c. 155, §§16-18 (AMD).

**§1960. COPY EVIDENCE; OATHS; SUBPOENAS****(REPEALED)**

## SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §19 (RP).

**§1961. CONTEMPT****(REPEALED)**

## SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §20 (RP).

**§1962. SERVICE****(REPEALED)**

## SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §21 (RP).

**§1963. SUBPOENA**

In any proceeding before the board under this article, the board may issue subpoenas for the attendance of witnesses, or for the production of documents and may examine witnesses under oath provided that:

[1987, c. 155, §22 (AMD).]

1. Upon written application of a party to a proceeding, the board shall issue subpoenas for the attendance of witnesses or for the production of documents;

[ 1973, c. 621, §1 (NEW) . ]

2. A person who fails to obey the subpoena of the board may be punished as for contempt of court on application by the board to the Superior Court for the county in which such failure occurs;

[ 1973, c. 621, §1 (NEW) . ]

3. Witnesses who are summoned before the board or its agents shall be entitled to the same witness and mileage fees as are paid to witnesses subpoenaed in the District Courts of the State.

[ 1973, c. 621, §1 (NEW) . ]

## SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §22 (AMD).

**§1964. ANTITRUST**

The activities of qualified associations and handlers in bargaining with respect to the price, terms of sale, compensation for commodities produced under contract or other contract terms relative to agricultural commodities produced by the members of such qualified associations are deemed not to violate any antitrust law of this State. Nothing in this Article may be construed to permit handlers to contract, combine or conspire with one another in bargaining with qualified associations. [2013, c. 2, §21 (COR).]

## SECTION HISTORY

1973, c. 621, §1 (NEW). RR 2013, c. 2, §21 (COR).

## §1965. UNFAIR PRACTICES

1. Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage nor permit an employee or agent to engage in any of the following practices, defined as unfair practices:

- A. To coerce a producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of his right to join and belong to an association except as provided in section 1958, subsection 5; [1987, c. 155, §23 (AMD).]
- B. To discriminate against a producer with respect to price, quantity, quality or other terms of purchase, acquisition or other handling of agricultural products because of his membership in or contract with an association; [1973, c. 621, §1 (NEW).]
- C. To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler; [1973, c. 621, §1 (NEW).]
- D. To pay or loan money, give anything of value or offer any other inducement or regard to a producer for refusing or ceasing to belong to an association; [1973, c. 621, §1 (NEW).]
- E. To make or circulate unsubstantiated reports about the finances, management or activities of associations or handlers; [1973, c. 621, §1 (NEW).]
- F. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act; [1973, c. 621, §1 (NEW).]
- G. To refuse to bargain with an accredited association with whom the handler has had prior dealings or with an accredited association whose producers in the bargaining units have had substantial dealing with the handler prior to the accreditation of the association; or [1973, c. 621, §1 (NEW).]
- H. To negotiate with a producer included in the bargaining unit after an association is accredited. [1973, c. 621, §1 (NEW).]

[ 1987, c. 155, §23 (AMD) .]

2. An association shall not engage or permit an employee or agent to engage in the following practices, defined as unfair practices:

- A. To act in a manner contrary to the bylaws of the association; [1973, c. 621, §1 (NEW).]
- B. To refuse to bargain with a handler with whom the accredited association has had prior dealing or with whom its producers have had substantial dealing prior to the accreditation of the association; [1973, c. 621, §1 (NEW).]
- C. To coerce or intimidate a handler to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a producer; [1973, c. 621, §1 (NEW).]
- D. To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers; [1973, c. 621, §1 (NEW).]
- E. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act; [1973, c. 621, §1 (NEW).]
- F. To hinder or prevent, by picketing, threats, intimidations, force or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance; [1973, c. 621, §1 (NEW).]

G. To exercise coercive pressure by picketing, patrolling or otherwise business establishments other than the premises owned or controlled by the handler in order to cause such parties to cease doing business with such handler. [1973, c. 621, §1 (NEW).]

[ 1973, c. 621, §1 (NEW) .]

**3. Notice; opportunity for hearing.** Whenever it is charged that a qualified association or a handler has committed an unfair practice under this section, the board shall provide that person with notice and opportunity to be heard, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory hearings.

[ 1987, c. 155, §24 (NEW) .]

**4. Hearing.** Hearings held pursuant to subsection 3 shall be held in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory hearings. The board shall request that the Attorney General or any attorney in his department designated by the Attorney General, be present at these hearings and shall advise the board on procedure and on the admissibility of any evidence.

[ 1987, c. 155, §24 (NEW) .]

**5. Findings.** If, upon a preponderance of the evidence, the board determines that the person complained of has committed an unfair practice, in violation of this article, it shall state its findings of fact and shall issue an order requiring the person to cease and desist from such conduct and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this article. Failure to comply with such an order is a violation of this article. If the board determines that the person complained of has not committed an unfair practice, it shall state its findings of fact and shall issue an order dismissing the charges.

[ 1987, c. 155, §24 (NEW) .]

**6. Frivolous charges.** If the board determines that a charge of unfair practice is frivolous, it shall state its findings of fact and may issue a reprimand to the person making the charge. Where the board determines that a person who made a charge which was determined to be frivolous did so knowing the charge to be frivolous, it shall state its findings of fact and shall issue an order requiring that person to pay the reasonable attorneys fees and double the amount of other reasonable costs incurred by the person against whom the charge was made in defending against the charge before the board. Where it is disputed, reasonableness shall be determined by the board. The order shall also require that person to reimburse the State for the per diem payments made to board members for their attendance at the hearing on the charge. Failure to comply with such an order is a violation of this article.

[ 1987, c. 155, §24 (NEW) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §§23,24 (AMD).

### Subchapter 3: EMPLOYEE COOPERATIVE CORPORATIONS

#### §1971. TITLE

This subchapter shall be known and may be cited as the "Employee Cooperative Corporations Act."  
[1983, c. 136, (NEW).]

#### SECTION HISTORY

1983, c. 136, (NEW).

## §1972. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 136, (NEW).]

**1. Employee cooperative.** "Employee cooperative" means a corporation which has duly elected to be governed by this subchapter.

[ 1983, c. 136, (NEW) .]

**2. Member.** "Member" means a natural person who has been accepted for membership in and owns a membership share issued by an employee cooperative.

[ 1983, c. 136, (NEW) .]

**3. Membership fee.** "Membership fee" means an initial payment made by a person to an employee cooperative as a condition to becoming a member.

[ 1983, c. 136, (NEW) .]

**4. Patronage.** "Patronage" means the amount of work performed as a member of an employee cooperative, measured in accordance with the articles of incorporation or bylaws.

[ 1983, c. 136, (NEW) .]

**5. Written notice of allocation.** "Written notice of allocation" means a written instrument which discloses to a member the stated dollar amount of that member's patronage allocation and the terms for payment of that amount by the employee cooperative.

[ 1983, c. 136, (NEW) .]

### SECTION HISTORY

1983, c. 136, (NEW).

## §1973. APPLICATION OF OTHER LAWS

Except as otherwise provided in this subchapter, employee cooperative corporations are governed by Title 13-C, the Maine Business Corporation Act. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §30 (COR).]

### SECTION HISTORY

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B30 (COR).

## §1974. REGISTRATION OF SECURITIES

Employee cooperatives are subject to Title 32, chapter 13. The fee charged for registration or renewal shall be \$10. [1983, c. 136, (NEW).]

### SECTION HISTORY

1983, c. 136, (NEW).

## **§1975. FORMATION OF EMPLOYEE COOPERATIVE CORPORATION; REVOCATION**

**1. Election.** Any corporation organized under former Title 13-A or Title 13-C may elect to be governed as an employee cooperative under this subchapter, by so stating in its articles of incorporation or articles of amendment filed in accordance with Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §31 (COR) .]

**2. Revocation.** An employee cooperative may revoke its election under this subchapter by a vote of 2/3 of the members and through articles of amendment duly filed in accordance with Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §31 (COR) .]

### SECTION HISTORY

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B31 (COR).

## **§1976. USE OF WORDS "COOPERATIVE," "CO-OP"**

No person, firm, corporation or association, domestic or foreign, hereafter commencing business in this State may use the word "cooperative" or "co-op" as a part of its corporate name, unless it has complied with this subchapter or some other statute of this State relating to cooperative associations. A foreign association organized under and complying with the cooperative law of the state of its creation shall be entitled to use the term "cooperative" or "co-op" in this State if it has obtained the privilege of doing business in this State. [1983, c. 136, (NEW).]

### SECTION HISTORY

1983, c. 136, (NEW).

## **§1977. MEMBERSHIP IN EMPLOYEE COOPERATIVE CORPORATION**

The articles of incorporation or the bylaws shall establish qualifications and the methods of acceptance and termination of members. No person may be accepted as a member unless employed by the employee cooperative on a full-time or part-time basis. [1983, c. 136, (NEW).]

### SECTION HISTORY

1983, c. 136, (NEW).

## **§1978. MEMBERSHIP SHARES; FEES**

**1. Issuance of shares.** An employee cooperative shall issue a class of voting stock designated as membership shares.

[ 1983, c. 136, (NEW) .]

**2. Payment.** Each member of an employee cooperative corporation must be issued a membership share upon payment of a membership fee, the amount of which must be determined from time to time by the directors. Title 13-C, section 621 does not apply to membership shares.

[ 2003, c. 344, Pt. D, §8 (AMD) .]

**3. Ownership limited.** Each member shall own only one membership share, and only members may own those shares.

[ 1983, c. 136, (NEW) .]

**4. Voting stock limited.** Unless otherwise provided in this subchapter or in the articles of incorporation of an employee cooperative, no other capital stock other than membership shares may have voting power. In the event that proposed amendments to the articles of incorporation would adversely affect any nonvoting class of shareholders, such action may not be taken without the vote of those shareholders, as provided in Title 13-C, sections 1003 and 1004.

[ 2003, c. 344, Pt. D, §8 (AMD) .]

#### SECTION HISTORY

1983, c. 136, (NEW). 2003, c. 344, §D8 (AMD).

### §1979. AMENDMENT OF BYLAWS

The bylaws of an employee cooperative may only be amended by members, except as provided in Title 13-C, section 207. [2003, c. 344, Pt. D, §9 (AMD) .]

#### SECTION HISTORY

1983, c. 136, (NEW). 2003, c. 344, §D9 (AMD).

### §1980. EARNINGS OR LOSSES

**1. Apportionment.** The net earnings or losses of an employee cooperative shall be apportioned and distributed at such times and in such manner as the articles of organization or bylaws shall specify. Net earnings declared as patronage allocations with respect to a period of time, and paid or credited to members, shall be apportioned among the members in accordance with the ratio which each member's patronage during the period involved bears to total patronage by all members during that period.

[ 1983, c. 136, (NEW) .]

**2. Method.** The apportionment, distribution and payment of net earnings required by this section may be in cash, credits, written notices of allocation or capital stock issued by the employee cooperative.

[ 1983, c. 136, (NEW) .]

#### SECTION HISTORY

1983, c. 136, (NEW).

### §1981. ACCOUNTING FOR EARNINGS OR LOSSES

**1. Internal accounts.** Any employee cooperative may establish in its articles of incorporation or bylaws a system of internal capital accounts to reflect the book value and to determine the redemption price of membership shares, capital stock and written notices of allocation.

[ 1983, c. 136, (NEW) .]



**2. Redemption.** The articles of incorporation or bylaws of an employee cooperative may permit the periodic redemption of written notices of allocation and capital stock, and must provide for recall and redemption of the membership share upon termination of membership in the cooperative. No redemption may be made if such redemption would result in the liability of any director or officer of the employee cooperative under Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §32 (COR) .]

**3. Interest.** The articles of incorporation or bylaws may provide for the employee cooperative to pay or credit interest on the balance in each member's internal capital account.

[ 1983, c. 136, (NEW) .]

**4. Collective reserve account.** The articles of incorporation or bylaws may authorize assignment of a portion of retained net earnings and net losses to a collective reserve account. For purposes of this chapter, a collective reserve account means an unindivuated account on the corporate books representing the corporation's entire net book value minus balances in any other equity accounts. Earnings assigned to the collective reserve account may be used for any and all corporate purposes as determined by the board of directors.

[ 1983, c. 136, (NEW) .]

#### SECTION HISTORY

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B32 (COR) .

## §1982. INTERNAL CAPITAL ACCOUNT COOPERATIVES

**1. Types of accounts permitted.** An internal capital account cooperative is an employee cooperative whose entire net book value is reflected in internal capital accounts, one for each member, and a collective reserve account, and in which no persons other than members own capital stock. In an internal capital account cooperative, each member shall have only one vote in any matter requiring voting by stockholders.

[ 1983, c. 136, (NEW) .]

**2. Allocation to accounts.** An internal capital account cooperative shall credit the paid-in membership fee and additional paid-in capital of a member to the member's internal capital account, and shall also record the apportionment of retained net earnings or net losses to the members in accordance with patronage by appropriately crediting or debiting the internal capital accounts of members. The collective reserve account in an internal capital account cooperative shall reflect any paid-in capital, net losses and retained earnings not allocated to individual members.

[ 1983, c. 136, (NEW) .]

**3. Adjustment of accounts.** In an internal capital account cooperative, the balances in all the internal capital accounts and collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of the balances is equal to the net book value of the employee cooperative.

[ 1983, c. 136, (NEW) .]

**4. Exceptions.** Title 13-C, section 1302 does not apply to an internal capital account cooperative.

[ 2003, c. 344, Pt. D, §10 (AMD) .]

#### SECTION HISTORY

1983, c. 136, (NEW). 2003, c. 344, §D10 (AMD).

## **§1983. REVOCATION OF ELECTION AS EMPLOYEE COOPERATIVE CORPORATION**

When any employee cooperative revokes its election in accordance with section 1975, the articles of amendment must provide for conversion of membership shares and internal capital accounts or their conversions to securities or other property in a manner consistent with Title 13-C. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §33 (COR).]

### **SECTION HISTORY**

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B33 (COR).

## **§1984. MERGERS**

An employee cooperative that has not revoked its election under this subchapter may not consolidate or merge with another corporation other than an employee cooperative. Two or more employee cooperatives may consolidate or merge in accordance with Title 13-C, chapter 11. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §34 (COR).]

### **SECTION HISTORY**

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B34 (COR).

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